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REPORT ON PROBABLE CAUSE DETERMINATIONS

OF THE OAKLAND PUBLIC ETHICS COMMISSION

(COMPLAINT -No. 0035 FILED BY HUGH BASSETTE)

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The determinations of probable cause set forth herein are not determinations that any violations of law have occurred. Instead, they are preliminary determinations that a hearing is appropriate based upon an offer of proof by independent counsel for the Public Ethics Commission, following his investigation of the allegations of the complaint. No parties were entitled to be present at the closed sessions where the probable cause determinations were made. While independent counsel, in the course of his investigation, communicated informally with the complainant, city staff and some of the respondents to obtain further information to aid in his analysis, none of the named respondents have yet had an opportunity to formally address the allegations or present exculpatory or mitigating evidence in a hearing before the Commission or its designee. Each respondent as to whom probable cause to conduct a hearing has been determined to exist will have the opportunity to respond and to participate in a public hearing before any decision is made based on all of the evidence adduced at the hearing. This report also contains preliminary determinations that particular charges against various respondents should be dismissed. Action on the proposal for dismissal of particular charges will be placed on the agenda of the next regularly scheduled meeting of the Commission on September 13, 1999.

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PREFACE

On June 2, 1998, Oakland resident Hugh Bassette filed a complaint dated May 30, 1998, alleging numerous violations of the City of Oakland Campaign Reform Act ("Act"). The complaint is in two parts. Part I of the complaint alleges violations of the Act's contribution limits (restrictions on the amounts of contributions) and Part II alleges violations of a provision of the Act prohibiting those engaged in certain types of contract negotiations with the city from making contributions to candidates or officeholders.

Pursuant to the provisions of the Act then in effect, the complaint was initially recommended for referral to independent counsel, Mr. David Schuricht of Katzen & Schuricht in Walnut Creek. In the summer of 1998, however, before Mr. Schuricht's appointment had been finalized, the Act was amended to transfer jurisdiction over complaints to the Oakland Public Ethics Commission. Under the Act as amended, the City Attorney would presumptively have served as counsel for the Commission. However, many of the allegations of the complaint were directed at present and former members of the City Council, and at that time the City Attorney served at the pleasure of the Council (a situation which changed with the passage of Measure X in November 1998). Given her relationship with the Council, the City Attorney declared a conflict of interest, and. Mr. Schuricht was approved as independent counsel for the Commission and commenced work in the fall of 1998.

Since his appointment, independent counsel has appeared before the Commission in closed session on several occasions between November 1998 and August 1999 to make preliminary reports and receive interim instructions on policy issues that helped focus the investigation.[1] Independent counsel has also (1) reviewed and analyzed voluminous campaign statements filed by committees alleged to have received improper contributions, (2) prepared working charts showing contributions

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1. The Commission met in closed session for these appearances because the complaint was in its investigative stage and decisions were being made as to whether charges would be brought that could result in litigation involving the Commission as a party in the courts. In conducting closed sessions under the litigation provisions of the Brown Act and the Sunshine Ordinance, the Public Ethics Commission followed the practice of the San Francisco Public Ethics Commission under similar circumstances. This practice is also similar to that of the Fair Political Practices Commission, which treats the handling of a complaint as a confidential, prosecutorial function prior to the issuance of a probable cause determination. However, the FPPC is large enough that its own attorney staff handles the cases without any appearances before the Commission in the investigative stage.

to each such committee by contributors mentioned in the complaint, (3) corresponded and conferred with campaign treasurers and individual contributors about issues affecting the propriety of particular contributions (including earmarking of contributions for officeholder funds, aggregation of contributions made by related individuals and/or entities, etc.,) and (4) reviewed and analyzed documents produced by various departments of city government relative to Part II of the complaint. Counsel has since reported to the Commission with respect to all of the probable cause issues raised by the complaint.

The work done by independent counsel was complex and extensive, involving approximately fifty counts (many containing multiple allegations) charging violations of the Act by one or more of a dozen present or former elected officials and more than thirty business or individual contributors over a four-year period. Counsel's work on this complaint is also expected to be unique in several respects. First, in May of this year, following authorization by the City Council, the City Manager hired an Executive Director for the Commission. The Executive Director is expected to take a primary role in investigating any future complaints. Second, as a result of the passage of Measure X, the City Attorney's office is now independent of the City Council and no longer has a built-in "institutional" conflict in representing the Commission when complaints are asserted against members of the Council (although until the election of a City Attorney, there is a reporting relationship to the Mayor). Third, this complaint raises issues respecting the effect of the 1997 suspension of the Act--issues which may not need to be addressed in the future. Fourth, the Commission as a whole conducted several hearings in oversight of the probable cause phase of this proceeding because of the large number of legal and policy issues of first impression and the absence of an Executive Director until May of this year. It is anticipated that under the recently adopted General Complaint Procedures, future complaints will generally be delegated to the Executive Director with the possible assistance of one Commission member and the advice of counsel prior to a single hearing at which probable cause will be determined. Finally, the issues in the pending complaint presented a number of questions concerning the meaning of portions of the Act that have since been the subject of clarifying amendments.

Independent counsel's investigative work is now complete. The Commission wishes to express its thanks to Mr. Schuricht for his service to date and for his clear and comprehensive presentation of the issues. Because of the presence of multiple issues of "first impression," the Commission has included somewhat lengthy legal analysis in this report in order to assist all interested parties and the public in understanding the reasons for the Commission's preliminary

determinations. It is not anticipated that similar reports will routinely accompany the Commission's probable cause determinations in the future.

The Commission recognizes that the Act is still relatively new and that unintentional violations may have occurred in the past. The City Council, however, has recently adopted amendments to the Act which the Commission views as a major step in facilitating future compliance by both contributors and candidates. It is the hope of the Commission that this report will also serve to further that end.

I. INTRODUCTION

This report is, like the complaint, drafted in two parts. In each part, where recurring or generic issues occur, a brief discussion of those issues precedes the discussion of individual allegations. Four points bear emphasis at the outset.

First, ambiguities exist in the Act, making determinations of probable cause difficult in many cases. Specific interpretation problems are discussed below. Moreover, because constitutional due process requires that ambiguities in penal statutes be interpreted in favor of the alleged violator, there are instances in which the spirit of the law, and perhaps problems the drafters of the ordinance sought to address, cannot be redressed on the facts alleged here.

Second, this complaint involves numerous political contributions made over a substantial number of years, with facts alleged as long ago as 1993. However, two months after receipt of the complaint, in empowering the Commission to enforce the Act, the City Council also established a two-year limitations period for the Commission's jurisdiction over alleged violations of the Act. That provision limits the Commission's jurisdiction to alleged violations that occurred within two years before the June 2, 1998 receipt of the complaint. Hence allegations that predate June 2, 1996, are beyond the reach of the Commission, and the Commission can make no finding on the merits with regard to those allegations. Third, during the time period covered by the complaint, the operation of the ordinance was suspended by the passage of Proposition 208 in November 1996. The effect of that passage was to suspend the ordinance from January 1, 1997, until Proposition 208 was enjoined by a federal court in January 1998, when the ordinance once again took effect. Since the ordinance was not in effect in 1997, no conduct during 1997 can be the basis for a finding of probable cause for a hearing. In addition, the Commission has determined that, under the circumstances, it is not appropriate to aggregate contributions made during the suspension period with contributions made while the ordinance was in effect.

Fourth, late in the investigative process, and after Mr. Bassette filed a lawsuit in Superior Court, he sought to withdraw part of this complaint. Specifically, he sought to withdraw the complaint as to Council members Russo, Miley, Nadel, Spees and Chang[2] and as to all named contributors, but not as to the remaining members of the City Council or their campaign committees.[3] No justification was offered for the decision not to pursue some of the respondents on issues that the complainant still wished to pursue against other respondents.

The City Charter grants the Commission jurisdiction to oversee compliance with the Oakland Campaign Reform Act. The City Council has since approved General Complaint Procedures detailing the Commission's power to maintain continuing jurisdiction over withdrawn complaints. Because the Commission had already devoted significant resources to investigating the allegations of the complaint before Mr. Bassette made known his desire to partially withdraw it, the Commission determined that the investigation by outside counsel should be completed as to all of the complaint's allegations, regardless of the complainant's apparent, belated change of heart.

II. PROBABLE CAUSE DETERMINATIONS ON PART I (EXCESSIVE CONTRIBUTIONS)

A. OVERVIEW

The complaint alleges facts dating back to 1993. The Act originally took effect on January 1, 1994 and had a limitations period of four years from the date of the violation. The Act originally was enforceable through civil actions brought by independent counsel appointed by the City Attorney for such purpose or (if no action was timely brought by the independent counsel) by any resident of the City of Oakland. As noted above, the 1998 amendments restricted the Act's scope to

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2. All were named in the original complaint. Mr. Bassette also sought to withdraw his complaint against former council member Bayton. He apparently sought to keep alive his complaint only as to then Mayor Harris and Council members de la Fuente, Brunner and Reid. He did not indicate whether he wished to withdraw his complaint as to former council members, other than Bayton (i.e. Jordan and Woods-Jones).

3. Since the operative section for Part II of the complaint, section 3.12.140 of the Act (prohibiting contributions during specified contract negotiations), is directed *only* at contributors and *not* at recipients, the attempted partial "withdrawal" would have eliminated all viable claims under Part II, a result which does not appear to have been intended by Mr. Bassette.

alleged violations occurring within two years before the filing of a complaint and gave enforcement authority to the Commission.

The majority of the violations alleged in the pending complaint are not within the jurisdiction of the Commission since they occurred more than two years before the complaint was filed. As a related matter, many of the contributions referred to in the complaint were made during the time the Act was suspended, from January 1, 1997, through early January 1998, so those contributions were not subject to the Act's proscriptions.

To analyze the violations alleged in Part I of the complaint, it is necessary to understand the restrictions the Act imposes on amounts that may be contributed to a candidate. The Oakland City Council first adopted this Act in July of 1993, effective January 1, 1994. In establishing this new law, the City Council specifically acknowledged that "monetary contributions to political campaigns are a legitimate form of participation in our political process, but the financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates. "It also observed that" the rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the governmental process." (Section 3.12.020 A and B). One of the principal purposes the City Council sought to accomplish was "to reduce the influence of large contributors with a specific financial stake in matters under consideration by the City of Oakland, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland." Section 3.12.030.B.

For candidates who accept voluntary campaign expenditure limits, the Act provides that no person or entity may contribute more than $500 to such candidates "for any election".[4] (Note that contributions "earmarked" for "officeholder funds" are discussed separately.) The Act provides that primary and general elections are different elections for the Act's purposes; defines "election cycle"

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4. Although the limit is $100 for candidates who do not accept the voluntary expenditure limits, it appears that all of the candidates who received contributions alleged in the complaint *did* accept the expenditure limits for the pertinent elections. Also, higher limits apply to "broad-based political committees," but none of the contributions in question appear to involve such entities.

as a four year period preceding a term of office (beginning on January 1, and ending on December 31 of the fourth year thereafter); and states that the primary election period extends from January 1 of the first year of an election cycle through June 30 of the fourth year and that the general election cycle is from July 1 through December 31 of the fourth year of the cycle.

Because the terms of city council members are staggered, there is one election cycle for candidates for mayor and for districts 2, 4, and 6, and a different cycle for candidates for the at-large council seat and for districts 1, 3, 5, and 7. For mayor and districts 2, 4, and 6, the most recently completed election cycle began on January 1, 1995, and ended on December 31, 1998. For the at-large seat and districts 1, 3, 5, and 7, one election cycle ran from January 1, 1993, through December 31, 1996, and the current four-year cycle began on January 1, 1997. In each case, the last six months of the cycle constituted a general election period, and the balance of the cycle constituted a primary election period.

Among the contributions alleged in Part I of Mr. Bassette's complaint, the Commission found nine (9) possible violations of the Act which are not outside the two-year limitations period. In addition, the Commission found seven (7) possible violations of the contribution limits among contributions alleged only in Part II (but not in Part I) of the complaint. Independent counsel also found three (3) other possible violations not listed anywhere in the complaint but arising out of contributions made by contributors named in the complaint. The 19 possible violations (including the nine alleged in Part I of the complaint) raise, to varying degrees, several recurring legal and factual issues, including the following:[5]

1. Whether an additional $500 (in addition to a $500 campaign contribution) may be contributed to a candidate's officeholder fund during an election period without violating the Act;

2. If the answer to question #1 is in the affirmative, the manner in which a contributor must "earmark" or segregate all or part of a contribution for the officeholder fund in order for it not to be deemed to be a campaign contribution;

3. Whether the facts justify aggregation of specified contributions by apparently related persons and/or entities;

4. Whether a contributor can properly make contributions in excess of the $500 limit during a single election period if part of the contribution is designated for the primary election and part is designated for the general election;

5. Whether a candidate should be penalized for violating the Act when his treasurer unsuccessfully attempts to return that portion of a contribution which is in excess of the limits within a week after receiving the contributor's check and depositing it; and

6. Whether a contribution made in 1997 (while the Act was suspended) may be combined with a 1998 contribution made during the same election period for purposes of determining whether the Act has been violated.

The contributions raising the foregoing issues are addressed in the first part ("Discussion of Contributions Raising Significant Issues") of the next section of this report. The second part of the next section ("Other Alleged Excessive Contributions") states the Commission's determinations with respect to the remaining contributions alleged in Part I of the complaint, none of which present probable cause for a hearing.

B. SPECIFIC PROBABLE CAUSE DETERMINATIONS

The following paragraphs group the 19 possibly illegal contributions (which include some multiple contributions by the same contributor or related contributors) according to the issues they raise and discuss factors involved in determining whether these contributions may have violated the Act.

1. Discussion of Contributions Raising Significant Issues:

a. Contribution on its face in excess of the Act's limitation.

Granny Goose Foods, Inc., gave $1,000 to De La Fuente for City Council in September 1996. Independent counsel reported the receipt of a letter from Henry C. Levy, treasurer for Mr. De La Fuente's committee, stating that $500 of this contribution was earmarked for the officeholder fund. Independent counsel found no reference to such designation in the relevant campaign reports. Moreover, assuming for the sake of argument that the contributor did agree that $500 should go to the candidate's officeholder fund, a question exists as to whether the funds were "earmarked" in the appropriate manner. The Commission considers a hearing to be necessary to determine these issues. Accordingly, the Commission determines that there is probable cause to conduct a hearing on the allegation based upon Granny Goose Foods, Inc.'s contribution of $1,000 to De La Fuente for City Council in September of 1996 and the acceptance of such contribution by the candidate's committee.

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5. These issues are also discussed in the specific discussions of the pertinent contributions, *infra*.

b. Other contributions "earmarked" for officeholder fund.

The following chart shows contributions that exceeded the maximum campaign contribution, but which were followed by the officially reported transfer of the excess to the recipients' officeholder accounts:[6]

	Recipient	Contributor	Election Period	**Total Amount**	**Amount to Officeholder Fund**
1	Harris	Uribe & Associates	98 Primary	$700	$200
2	Harris	Gallagher & Burke	98 Primary	$750	$250
3	Harris	James Johnson	98 Primary	$700	$200
4	Chang	A&B Auto	96 General	$750	$250

The legality of these contributions depends upon (1) whether the Act permitted a contributor to make a donation to an officeholder fund in addition to the maximum permitted contribution to that officeholder's campaign funds and (2) whether funds transferred to the officeholder fund were properly earmarked by the contributor. With respect to the first of these two issues, the Act itself states only that contributions received by the officeholder fund "shall be subject to the contribution limitations." In 1994, a question was raised as to whether contributions to the officeholder fund were to be included in the $500 maximum. The City Attorney's office issued a letter at that time concluding that a contributor is permitted to make separate contributions of $500 each to the campaign and officeholder funds of a candidate who has accepted the expenditure limits. The Commission concurs in this interpretation.

With respect to the second issue, in the same 1994 letter the City Attorney's office opined that contributions to the officeholder fund should be earmarked by the contributor at the time of the contribution. In 1996, the City Council adopted a regulation (effective 2/27/96) requiring that contributions to an officeholder fund be "earmarked" for the officeholder fund by the contributor. The regulation does not specify the manner in which funds are to be earmarked.

Following interviews with campaign treasurers, independent counsel reported that the contributions to officeholder funds included in the table were generally "earmarked" in one of two ways--either (1) the contribution was made at an event advertised as a fundraiser for an officeholder fund or (2) the funds were "earmarked" via the recipient's treasurer's post-contribution inquiry as to

6. The contributions shown on lines 2 and 3 of the chart were alleged in Part II of the complaint.

whether the contributor objected to the deposit of all or a portion of the contribution into the officeholder fund. This presents the issue whether either (or both) of these approaches satisfies the earmarking requirement. The Commission determines that there is probable cause to conduct a hearing on this question.

Accordingly, there is probable cause to conduct a hearing on the allegations based upon the above-listed contributions made by Uribe & Associates, James Johnson and Gallagher & Burke in the 1998 primary cycle to the committee of former Mayor Harris and the receipt of such contributions by former Mayor Harris' committee. The Commission further determines that there is probable cause to conduct a hearing on the allegation based upon the contributions of A & B Auto during the period of the 1996 general election to candidate Chang's committee and the receipt of such contribution by candidate Chang's committee.

c. Contributions involving aggregation issues:

The following contributions raise aggregation issues:[7]

	Recipient	Election Period	Contributor & Amount	Related Contributor(s) & Amount(s)	Total (Aggregate) Contribution
1	**De La Fuente (Mayoral)**	**98 Primary**	**Keith Kim $500**	**Granny Goose Foods $500**[8]	**$1,000**
2	Brunner	96 General	David Duong $500	California Waste Solutions $500	$1,000
3.	**Brunner**	**96 General**	**A&B Auto $500**	**William H. Taylor Investments $200**	**$700**
4	Bayton	96 General	David Duong $250	California Waste Solutions $250; Golden Eagle Trucking $250.	$750[9]

7. The contributions shown on lines 6, 7, 8, 9, and 12 of the chart were alleged in Part II of the complaint. Two of the three contributions shown on line 10 of the chart were not alleged in the complaint but were discovered in the course of counsel's investigation.

8. The relevant campaign statement also shows a 12/31/96 $500 contribution by Joann F. McMahon whose occupation is listed as "Director of Administration--Granny Goose." We have no other evidence indicating that there is a basis for aggregating Ms. McMahon's contribution with any other contribution, so we find no probable cause for a hearing with respect to her contribution.

5	Reid	96 General	David Duong $500	California Waste Solutions $500; Golden Eagle Trucking $450; Dennis Duong $500; Kristina Duong $500.	$2,450[10]
6	Miley	98 Primary	Waste Management & WMX Technologies (Affiliated Entities) $500	Claude Everhart, Vice President of Waste Management $250	$750[11]
7	Reid	96 General	Waste Management $500	Claude Everhart, Vice President of Waste Management $100	$600
8	**Miley**	**98 Primary**	**Jack Sumski $297**	**Eastmont Mall $344; Eastmont Town Center $500**	**$1,141**
9	**Russo**	**98 Primary**	**Bill Taylor $500**	**A&B Auto $99**	**$599[12]**

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9. Ms. Bayton's campaign statement also shows a $250 contribution during the 1996 general election period from Warren Le, a supervisor at California Waste Solutions. Thus, there was reason to question whether there are grounds to aggregate his contribution with any of the others on this line (e.g., whether Mr. Le's contribution was financed or controlled by CWS).

10. Mr. Reid's campaign statement also shows a $500 contribution during the 1996 election period from Warren Le. Because Mr. Le is identified as a supervisor at California Waste Solutions, there was reason to inquire whether there are grounds to aggregate his contribution with those of that company.

11. Mr. Miley's campaign statements also show contributions totaling $347 from D. McDonald, Executive Vice President of Waste Management, and a $100 contribution from Joan Clark, an employee of Waste Management. Independent counsel's interviews of Mr. McDonald and Ms. Clark did not disclose any grounds for aggregating their contributions with those of Waste Management or its affiliate.

12. This contribution is also discussed in paragraph 3 below

10.	Russo	98 Primary	Montclair Golf Club $500	Christopher Lee $500; James Lee $500[13]	$1,500
11.	De La Fuente (Mayoral)	98 Primary	Alex Hahn $250	Korea Town Development Co. $500	$750[14]
12	De La Fuente (Mayoral)	98 Primary	Montclair Golf Club $500	Christopher Lee (Mgr. of Montclair Golf Club) $500	$1,000

Under the Act, contributions are to be aggregated to the extent they are made by (1) custodial parents and their minor child, (2) a corporation and a person owning a controlling interest in that corporation, (3) a general partnership and its general partner, (4) a corporation and its subsidiary, or (5) two entities that share a majority of the members of their boards of directors, two or more officers, or the same majority shareholder(s). Payments are also to be aggregated if they are financed, maintained or controlled by the same person or entity.

Investigation helped determine whether or not there might be a basis for contributions shown on the chart to be aggregated. The Commission has determined that there is probable cause to conduct a hearing on the allegations based upon the contributions shown on the chart in bolded type. The Commission has determined that there is no probable cause with respect to contributions shown on the lines with type that is not bolded.

For Waste Management and Claude Everhart, the Commission determines that no probable cause exists because Waste Management apparently is a publicly traded corporation, Mr. Everhart seems to have left the company's employ, and other Waste Management employees who made contributions have advised independent counsel that the company did not finance or reimburse their contributions.

For California Waste Solutions, Golden Eagle Trucking, David Duong, Dennis Duong, Kristina Duong, and Warren Le, it appears that there is no basis for aggregating their contributions.

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13. Christopher Lee and James Lee are listed in the relevant campaign statement as employees of Montclair Golf Club, and they apparently are both sons of Pilam Lee, owner of Montclair Golf Club.

14. One of these contributions was made in 1997, while the Act was suspended. As discussed in paragraph f, *infra,* the Commission has determined that it would be inappropriate to take 1997 contributions into account. Thus, the Commission determined that there is no probable cause for a hearing on the contributions shown on this line.

(This conclusion is partially based upon the Commission's view that for purposes of determining whether a married person owns a controlling interest in a corporation under the Act, corporate stock held as community property is to be allocated between the spouses, and is not to be deemed to be entirely owned by either spouse.)

For contributions by Montclair Golf Club, Christopher Lee and James Lee, independent counsel's communications with the contributors did not disclose grounds to believe that the contributions are subject to aggregation, and the Commission determines that there is no probable cause to conduct a hearing. Independent counsel's communications with the other contributors on the chart showed probable cause to believe that the listed contributions should be aggregated.

Accordingly, the Commission determines that there is probable cause to conduct a hearing on the allegations based upon the contributions listed on the chart which were made by the following contributors: Bill Taylor, A&B Auto, Jack Sumski, Eastmont Mall, Eastmont Town Center, Keith Kim, and Granny Goose Foods, Inc., as to whose contributions independent counsel's investigation suggested there are grounds for aggregation. The foregoing contributors and council members De La Fuente (mayoral campaign), Brunner, Miley and Russo (the apparent recipients of the listed contributions) shall have the opportunity to participate in a hearing before the Commission and present evidence showing that they did not violate the Act or that any violation was mitigated by lack of knowledge of the prohibited relationship or other factors.

d. Contributions allocated between primary and general elections.

In February 1995, A&B Auto made a $99 campaign contribution to Mr. Russo's controlled committee. On June 13, 1996, Bill Taylor, the owner of A&B Auto, made a $500 campaign contribution to the same committee. Both contributions were made during the 1998 primary election period, but the relevant campaign report includes notations apparently allocating $500 of the total $599 contribution to the primary election and the remaining $99 to the general election. Thus, this contribution raises the issue whether contributions made during one election period may be allocated to a different election so as to avoid violating the maximum contribution limit and, if so, how this may appropriately be done. In addition, there is a question whether the contributor in each instance actually designated portions of the contribution for different elections, or whether that was solely an accounting notation made after the contribution was received.

The Commission determines that there is probable cause to conduct a hearing on the allegations based upon the contribution of $500 by Bill Taylor to the committee of candidate Russo

during the 1998 primary cycle (which followed Mr. Taylor's prior contribution of $99 during the same election cycle) and candidate Russo's committee's acceptance of the $500 contribution.

e. Attempted return of excess contribution to the donor.

Telecommunications, Inc. ("TCI") contributed $198 to Mr. Reid's committee in September 1996 and sent another $396 in October 1996. These two contributions totaled $594 ($94 more than the maximum) and were both sent during the 1996 general election period. It appears that within about a week after receiving the $396 (and apparently after negotiating the check), Mr. Reid's treasurer wrote a check back to TCI for the $94 excess and returned it with an explanatory letter. The $94 check was never negotiated and (apparently after an unsuccessful effort to speak to someone at TCI about the problem), the treasurer added the $94 back into Mr. Reid's campaign account balance (during 1997, while the ordinance was suspended). The Act states that a contribution will not be considered to have been received if it is not negotiated or deposited *and* it is returned to the donor within seventy-two (72) hours of receipt. In this instance, it appears that the excess contribution was *received*, in violation of the Act, although it appears that the treasurer made a reasonably diligent effort to return it, although not until the check had been deposited and not until about a week after its receipt.

The Commission notes that state law permits a longer period of time for the return of inappropriate contributions and that the City Council has now also adopted a longer period by amending the Act. The primary problem here is not the delay of a few days in seeking to return the excess, but the fact that the check itself was not returned uncashed. Rather, it was negotiated in apparent violation of the Act. When the donor apparently failed to accept the return of $94, the campaign wound up keeping the illegal contribution. The treasurer's unsuccessful attempt to return the excess may be considered in mitigation as evidence of good faith, but the law clearly requires the inappropriate donation to be returned uncashed.

There is probable cause to conduct a hearing on the allegation based on TCI's contribution of $396 to council member Reid's campaign committee and the acceptance of such contribution (which followed the acceptance of a $198 contribution from TCI in the same election cycle).

f. 1998 contributions that exceed the limit in combination with contributions made during the 1997 suspension of the Act.

Although not alleged in the complaint, the investigation uncovered two 1998 contributions (made by contributors named in the complaint) that exceed the contribution limits when combined with other contributions made by the donors in 1997, while the Act was suspended.

The contributions are shown in the following table:

Recipient	Contributor	Election Period	Contribution During Act's Suspension	Post-Suspension Contribution	Total Contribution
Chang	Uribe & Associates	2000 Primary	$500	$250[15]	$750
De La Fuente (Mayoral)	Alex Hahn/Korea Town Development, Inc.	1998 Primary	$250	$500 by Korea Town Development Co.	$750

The key issue here is whether contributions made during the suspension period may be combined with contributions made after reinstatement of the Act in determining whether the Act has been violated. The Commission finds that they cannot. During the time the Act was not in effect, persons making contributions did so in light of the law at that time. The Commission finds no probable cause to conduct a hearing on these contributions.

2. <u>Other Alleged Excessive Contributions</u>.

This section lists (by candidate) all of the alleged violations set forth in Part I of the complaint, *other than those discussed in the previous section of this report.* The Commission has determined that there is no probable cause for a hearing with respect to any of the contributions in this section. The reasons for the Commission's determinations of no probable cause are stated below.

a. Contributions to Candidates for Mayor and Council Districts 2, 4 and 6.

1. Contributions to Mayor Harris.

i. From Dr. Blackwell/Medical Group at City Center:
$700 on 8/25/94.
This alleged contribution is outside the two-year limitations period.

ii. From Lake Chabot Pro Shop:
$600 on 2/15/96.
This alleged contribution is outside the two-year limitations period.

iii. From Alan Dones/Rondeau Bay Construction:
$1,000 on 4/20/95.
This alleged contribution is outside the two-year limitations period.

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15. This contribution was made on January 8, 1998. It appears that Proposition 208 was enjoined on January 6, 1998, resulting in the automatic reinstatement of the Act.

iv. From Davillier/Sloan, Inc.:
Davillier/Sloan, Inc: $1,000 on 5/3/96; $500 on 8/1/94; $1,000 on 8/1/94;
Jake Sloan: $350 on 1/26/94; $150 on 3/14/94;
Marry Davillier: $*500 on 3/14/94.*
These alleged contributions are all outside the two-year limitations period.

v. From Dreyers Ice Cream/Gary Rogers:
Dreyers Ice Cream: $1,000 on 9/22/94; $500 on 5/10/94;
Gary Rogers $500 on 9/22/94; $500 on 5/10/94.

These contributions are all outside the two-year limitations period.

vi. From the Duong Family/California Waste Solutions:
Victor Duong: $300 on 1/11/96;
David Duong: $750 on 5/11/95; $250 on 5/11/95; $200 on 9/22/94;
Michael Duong: $250 on 9/19/94;
Golden Eagle Trucking: $250 on 11/94; $500 in 1/96.

These contributions are all outside the two-year limitations period.

vii. From A&B Auto/Bill Taylor:
$750 on 2/21/95.
This contribution is outside the two-year limitations period.

viii. From Alex Hahn/Acorn Shopping Center:
$500 on 5/1/95; $500 on 10/10/94; $500 on 10/20/94; $1,000 on 2/17/94.
These contributions are all outside the two-year limitations period.

ix. From Cable Oakland:
$500 on 10/25/94; $250 on 10/1/94; $600 on 2/1/94.
These contributions are all outside the two-year limitations period.

x. From Alexander Haagen, et al.:
Alexander Haagen: $1,000 on 10/8/94 ;
Seymour Kreshek: $1,000 on 11/1/94;
Charlotte Haagen: $1,000 on 10/27/94.
These contributions are all outside the two-year limitations period.

xi. From Edward Blakely:
$1,000 on 10/26/94.
This contribution is outside the two-year limitations period.

xii. From Sares Regis Group:
$1,000 on 1/29/94.
This contribution is outside the two-year limitations period.

xiii. From Uribe and Associates:

$50 on 6/6/94; $500 on 8/25/94; $500 on 9/28/94;
These contributions are outside the two-year limitations period.

xiv. From Gallagher and Burke:
$250 on 2/16/94; $500 on 2/16/94; $ 350 on 8/25/94.
These contributions are outside the two-year limitations period.

xv. From ABC Security Service:
$300 on 2/12/94; $250 on 3/3/94.
These contributions are outside the two-year limitations period.

xvi. From Hotel Oakland:
$600 on 2/11/94.
This contribution is outside the two-year limitations period.

2. *Contributions to De La Fuente (Mayoral Campaign).*

i. From Waste Management of Alameda County.
$500 on 12/27/96; $500 on 12/26/96.
The 12/26/96 contribution was not in excess of the maximum permitted by the Act. (The 12/27/96 contribution was made to Mr. De La Fuente's campaign for city council.)

ii. From Keith Kim/et al.:
Merritt Restaurant: $500 on 8/16/95;
Lisa Lindsey Kim: $500 on 8/16/95;
Granny Goose: $1,000 on 9/30/96;
The 8/16/95 and 9/30/96 contributions were made to Mr. De La Fuente's city council campaign. The $1,000 contribution alleged to have been made on 12/31/96 appears to have been two $500 contributions--one from Granny Goose Foods and the other from Joanne F. McMahon whose occupation is shown on the campaign statement as "Director of Administration--Granny Goose." We have no evidence that the contribution by Ms. McMahon should be aggregated with any of the other contributions.

3. *Contributions to Spees (District 4):*

i. From Dreyers Ice Cream/Gary Rogers:
Dreyers Ice Cream: $500 on 5/20/94.
Gary Rogers: $500 on 5/20/94.
These contributions are outside the two-year limitations period.

4. *Contributions to Miley (District 6):*

i. From A&B Auto/Bill Taylor:
$600 on 3/18/94.
This contribution is outside the two-year limitations period.

b. Contributions to Candidates for Council Districts 1, 3, 5, 7 and At-Large.

1. Contributions to Brunner (District 1):

i. From Waste Management of Alameda County:
$500 on 6/4/96; $500 on 10/31/96.
These contributions were within the maximum allowed because one was made during the primary election period and the other was made during the general election period.

ii. From Duong Family/California Waste Solutions:
California Waste Solutions: $500 in 12/96; $200 in 2/97;

David Duong: $200 in 2/96; $500 in 9/96;
Victor Duong: $250 in 1/96.
All of the pre-June 1996 contributions are outside the two-year limitations period. The 2/97 contribution is irrelevant because the Act was suspended at that time. The 9/96 contribution ($500 from David Duong) and the 12/96 contribution ($500 from California Waste Solutions)are discussed in paragraph c ("Contributions involving aggregation issues") of the preceding section.

2. Contributions to Bayton (District 3):

i. From the Duong Family/California Waste Solutions/Golden Eagle Trucking:
David Duong: $250 on 10/21/96;

California Waste Solutions: $250 on 10/21/96;
Warren Le, a CWS employee: $250 on 10/21/96;
Golden Eagle Trucking: $250 on 10/21/96.
These contributions are in excess of the maximum only if at least three of them are aggregated. Although it appears that Mr. David Duong was president of California Waste Solutions ("CWS") in 1996, and Golden Eagle Trucking (now a suspended corporation, according to the Secretary of State's office) has the same address as CWS, the Commission has determined (as discussed in paragraph c of the preceding section of this report) that there is no probable cause to aggregate any of these contributions.

3. Contributions to De La Fuente (District 5 city council campaign):

i. From Waste Management of Alameda County:
$500 on 12/26/96; $500 on 12/27/96.
The 12/26/96 contribution was made to Mr. De La Fuente's mayoral campaign, and the 12/27/96 contribution did not exceed the maximum amount permitted by the Act.

ii. From Keith Kim/Granny Goose Foods:
Merritt Restaurant: $500 on 8/16/95;

Lisa Lindsey Kim: $500 on 8/16/95;
Granny Goose: $500 12/31/96;
Keith Kim: $500 on 12/31/96.
The 8/16/95 contributions are outside the two-year limitations period. The 12/31/96 contributions were made to Mr. De La Fuente's mayoral campaign.

4. *Contributions to Reid (District 7):*

   i. From Pilam Lee/Montclair Golf Course:
   $500 on 1/26/96; $300 on 3/18/96.
   These contributions are all outside the two-year limitations period.

   ii. From Duong Family/California Waste Solutions/Golden Eagle Trucking/DT Paper Trading:
   Kristina Duong: $500 on 2/22/95; $500 on 8/14/96;
   Golden Eagle Trucking: $500 on 9/21/95; $200 on 9/19/96;$250 on 10/24/96;
   Dennis Duong: $500 on 1/20/96; $500 on 9/19/96;
   California Waste Solutions: $500 on 8/14/96;
   D/T Paper Trading: $500 on 9/25/96;
   David Duong: $500 on 11/22/95; $500 on 10/24/96.
   The 2/22/95, 9/21/95, 11/22/95, 1/22/96, 1/96, and 2/96 contributions are outside the two-year limitations period. The 2/97 contribution was made while the Act was suspended. The remaining contributions are violative of the Act if at least some of them are aggregated. As is discussed in the preceding section of this report, the Commission has determined that no probable cause for aggregation exists in this instance.

   iii. From TCI:
   $198 on 9/27/96; $396 on 10/25/96.
   These contributions are discussed in paragraph e ("Attempted return of excess contribution to the donor") of the preceding section of this report.

5. *Contributions to Chang (At-Large):*

   i. From Waste Management of Alameda County:
   $100 on 2/21/96; $500 on 3/9/96.
   These contributions are outside the two-year limitations period.

   ii. From Uribe and Associates:
   $500 on 1/24/97; $250 on 1/21/97.
   These contributions were made while the Act was suspended, and therefore did not violate it.

III. PROBABLE CAUSE DETERMINATIONS ON PART II (CONTRIBUTIONS DURING CONTRACT NEGOTIATIONS)

This section addresses Part II of Mr. Bassette's complaint, which alleges violations of section 3.12.140 of the Act, prohibiting parties contracting with the City from making campaign contributions while specified contract negotiations are pending.[16]

(As discussed above, complainant Bassette made a belated request to partially withdraw his complaint. The Commission has decided that the complaining party is not empowered to withdraw a filed complaint without the Commission's approval and that given the circumstances of this matter, the investigation should be completed.).

A. OVERVIEW -- RECURRING ISSUES

As in Part I, in considering the allegations of Part II of the complaint, the Commission encountered a number of recurring legal issues in determining whether there is probable cause to hold a hearing on whether the Act has been violated. These issues include: (1) whether the Act is impermissibly vague or should be narrowly construed with respect to the meaning of the term "negotiations" in describing the time during which contributions are prohibited; (2) *when* a violation has occurred for purposes of the commencement of the two-year limitations period; (3) whether particular types of transactions are within the categories of contract negotiations covered by the Act; (4) whether the Act applies to one who contracts with the Redevelopment Agency of the City of Oakland, as opposed to the City itself; and (5) the relevance of any lack of notice to contractors affected by the Act. Discussion of each of these recurring issues follows.

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16. Section 3.12.140 provides:

A. No person who contracts with the City, for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever the value of such transaction would require approval by the City Council, shall make any contribution to an elected official, candidate, or committee controlled by such official or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

B. A person who contracts with the City for the rendition of any personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the city, whenever the value of such transaction would require approval by the City Council, and who violates subsection A of this section, shall be subject to the enforcement provisions of Article VII of this Act.

1. The Meaning of the Term "Negotiations".

In administrative proceedings as well as criminal prosecutions, statutes imposing penalties are to be construed in favor of those potentially subject to the penalty. (*People v. Vis*, (1966) 243 Cal. App. 2d 549, 554 [statute imposing penalty for violation of contractor licensing requirement].) Similarly, statutes creating a new liability and remedial statutes creating a remedy against a party who would not otherwise be liable must be strictly construed in favor of persons sought to be subject to their operation. (*Cook v. Superior Court* (1936) 12 Cal. App. 2d 608, 611; *Weber v. Pinyan* (1937) 9 Cal. 2d 226, 229.) Due process of law requires that the terms of a penal statute creating a new offense be sufficiently explicit to inform those subject to it as to what conduct is proscribed, and a statute prohibiting an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application violates due process. (*People v. Vis*, *supra*, 243 Cal. App. 2d at 553.) The Act prohibits those contracting with the City from making contributions ". . .at any time between commencement of negotiations and either the completion of, or the termination of, negotiations."

As explained by Counsel for the Commission following interviews with knowledgeable City staff, the customary procedures for the City to enter into contracts are different for different categories of contracts. For example, the City commonly publishes a "request for proposals" ("RFP") for professional services contracts and enters into discussions for formal written contracts after the City Council authorizes the city manager to enter into an agreement with one of those responding to the RFP. In the case of construction contracts, the City advertises for bids based upon particular specifications and the job is awarded to the lowest qualified bidder by Council resolution. Because the particulars are already included in the advertised specifications, no further written contract is entered into after the job is awarded to the lowest qualified bidder. In still other situations, discussions about contract terms might take place when one of the parties to an existing contract (such as a contract for the management of a city-owned facility) proposes that the contract be extended for a new term, with or without other modifications. These procedures give rise to questions about when negotiations begin and end in each context. With respect to professional services contracts, do negotiations commence with the publication of the RFP, only after a responding proposal is made, or only after the city manager is authorized to negotiate with a specified respondent? With respect to construction contracts, do negotiations begin when the City advertises for bids or when a bid is submitted, or, alternatively, are there no negotiations because

the job is simply awarded to the lowest qualified bidder? The answers to these questions obviously have a direct impact on whether contributions by the contracting party are prohibited under the Act.

The Commission believes that the meaning of "negotiations" is not likely to be found by a court to be so vague as to make the Act unenforceable. Due process considerations and the rule requiring a strict construction in favor of the party potentially subject to a penalty, [17] however, suggest that the Act will be interpreted to apply only when the contractual negotiating process has clearly commenced and *not* be interpreted to prohibit contributions immediately upon the dissemination of an RFP. RFPs are widely distributed by the City to encourage offers with the apparent expectation that only a few of the recipients will likely respond with a proposal. Until a recipient takes some affirmative step to enter into a contract with the City, it would likely not consider itself to be in negotiations with the City and might reasonably assume it was free to make contributions otherwise permitted under the Act. On the other hand, once a proposal is submitted the proposer is in a very real sense negotiating with the city, and it would defeat one of the primary purposes of the Act if contributions were not prohibited until after the proposer was selected by the city council. This is clarified in the recent amendments to the Act adopted by the City Council.

For construction contracts, the Act applies to contracts for rendering services and furnishing material, supplies and equipment to the city, but there is a question as to whether the process of advertising for bids and awarding the contract to the lowest qualified bidder involves "negotiations." While it can be argued that contract formation necessarily contemplates "negotiations" that commence with an offer and conclude with an acceptance, it could also be asserted that acceptance of the lowest qualified bid is a "minesterial" act where little or no discretion is exercised, not a discretionary act which could potentially be influenced by political contributions. In contrast, communications about proposed modifications or extensions to existing contracts appear to fit squarely into the definition of "negotiations".

The terms of the Act apply to contracts for rendering services and furnishing material, supplies and equipment to the city. While the formation of a contract contemplates "negotiations" that commence with an offer and conclude with an acceptance, there is a question as to whether the acceptance of the lowest qualified bid in particular instances is a discretionary act of approval by

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17. Unlike the provisions of the Act involved in Part I of Mr. Bassette's complaint (which limit the a*mounts* of contributions), section 3.12.140 only prohibited certain *contributors* from making contributions, that is, it did not prohibit officeholders or candidates from *receiving* contributions.

the City Council potentially subject to influence or a "ministerial" act where little or no discretion is exercised. In contrast, communications about proposed modifications or extensions to existing contracts appear to fit squarely into the definition of "negotiations".

Of the thirty (30) numbered allegations of Part II of Mr. Bassette's complaint,[18] all or part of four appear to involve construction contracts. These include #4 Baines-Robertson, #5 Alan Dones/Rondeau Bay Construction, #6 Davillier-Sloan, and # 31 Gallagher & Burke. Instances where contributions may have been made between the issuance of an RFP and the City Council's selection of the contributor's proposal include 1994 and 1995 contributions made by Dr. Fred Blackwell/Medical Group at City Center.

2. <u>Time of Commencement of the Two - Year Limitations Period.</u>

Section 3.12.290 (F) of the Act (as amended in July 1998) states that a complaint must be filed within two years after the date of the violation.[19] The pertinent section of the Act literally prohibits only a "person who contracts" with the City from making contributions (as opposed to one who negotiates but never enters into a contract). It is therefore arguable that no violation of the Act has occurred until a person involved in contract negotiations both makes a contribution and then enters into the contract. If so, some contributions that were made more than two years before June 2, 1998 (the date Mr. Bassette presented his complaint) could form the basis for violations which are *not* barred by the two-year limitations period. Violations alleged by Mr. Bassette which are in this category include certain 1995 and 1996 contributions by Dr. Fred Blackwell/Medical Group at City Center. The Commission has determined, however, that under the two-year limitations period of the Act, it cannot find probable cause, if an allegation is based upon a contribution made more than two years before the complaint was filed, even if contract negotiations were subsequently completed within the two-year period. The statute prohibits "contributions" and it is the date of the contributions that is the determinative issue for purposes of the statute of limitations. Post-contribution events (such as continuing contract negotiations) cannot revive possible violations which are otherwise time-barred.

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18. Although the highest numbered allegation in the complaint is number "35" there are only thirty because they are not all numbered consecutively.

19. Absent indications of a contrary legislative intent, defendants in pending cases are entitled to the benefit of changes in the law which lessen the punishment or eliminate the offense. *People v. Todd* (1994) 30 Cal. App. 4th 1724, 1729.

3. Transactions Not Covered by the Act.

The prohibition on contributions during contract negotiations applies only to contracts "for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever the value of such transaction would require approval by the City Council." (Act, section 3.12.140 (A).) Under Chapter 2.04 of the Oakland Municipal Code, except in situations deemed by the city manager to constitute an emergency, all contracts for services and/or supplies involving the expenditure of more than $50,000 and all contracts for professional services or consultants involving the expenditure of more than $15,000 must be awarded by the City Council.

Some of Mr. Bassette's allegations involve transactions that are not within the categories covered by the Act. These include #8 Dreyers Ice Cream/Gary Rogers [application for conditional use permit], #11 Golden State Warriors [issuance of bonds for Coliseum Arena project], #23 Alexander Haagen, et al. [City assistance in redevelopment of Sears Building], and #29 Keith Kim/Granny Goose/Lisa Lindsey Kim [City financing for purchase of business]. Because the transactions alleged are not covered by the Act, the Commission determines that there is no probable cause to find that the alleged contributions made by these parties constitute violations.

4. Contracts with Redevelopment Agency.

Several of the numbered allegations involve contracts between the named party and the Redevelopment Agency of the City of Oakland. These include #19 Alex Hahn/Acorn Shopping Center, #26 Sares Regis Group, #27 Housewives Market Merchants Association, and #34 The Martin Group/David Martin. The Act applies only to persons who contract with *the City*. Although the members of the City Council also serve as the governing board of the Redevelopment Agency, courts have held that even in these circumstances, a city and a redevelopment agency within it are distinct legal entities and a contract with one is not a contract with the other. (*Pacific States Enterprises, Inc. v. City of Coachella*, (1993) 13 Cal. App. 4th 1414, 1423-1435, and cases there cited; *contra Nolan v. Redevelopment Agency*, (1981) 117 Cal. App. 3d 494.) Given these precedents and the rule requiring that the Act be construed in favor of those charged with violating it, the Commission determines that there is no probable cause to find a violation of the Act when the alleged contract negotiations were with the Redevelopment Agency.

We note that the City Council has now amended the Act to include a prohibition against contributions made during specified time periods by persons negotiating with or under contract with the Redevelopment Agency as well as the City. It also requires the City Manager to notify such

persons of their duty to comply with the Act. This amendment cures this problem for the future by putting persons seeking contracts with the Redevelopment Agency on an equal footing with proposed City contractors with respect to prohibited contributions.

5. Lack of Notice to Contractors

The grand jury report of 1998 specifically examined the Act in regard to the prohibition on contributions by contractors and found that "The Campaign Reform Act has not provided the intended effect." *Grand Jury Report at 23.* In particular, the Grand Jury found that firms doing business with the city continue to "make sizeable contributions to one, a few, or many City Council members [and do so] with the expectation of special consideration." *Ibid at 23-24.* The Grand Jury attributed this, in part, to both a lack of notice to contractors (Council members, the Grand Jury noted, are not covered by this provision and disavow any responsibility for monitoring donations from contractors) and confusion over terms such as "commencement of negotiations." *Ibid at 24-25.* In addition to the concern expressed by the Grand Jury, a problem is presented here because of suspension and revival of the Act and the unwitting violations such "on again-off again" application can create. While it is a maxim of the law that "ignorance is no defense," it is also true that our system of justice takes inadvertent violations into account in establishing penalties. Under the 1998 version of the Campaign Finance Reform Act, whether violations were inadvertent can only be determined on a case-by-case basis. Although the City did not undertake to advise all affected contractors of the prohibitions of the new law, the original Act was adopted more than two years before the jurisdiction of this Commission commenced. Contractors may well have had ample opportunity to become familiar with its provisions and nonetheless sought to influence the decision-makers by making contributions to their campaigns while negotiations were pending. One contractor's 1994 request for an advisory opinion from the City Attorney interpreting the new Act's application is an indication that alert contractors could have made themselves aware of the existence of the Act and obtained clarification of its scope before making contributions that might be prohibited.

For the reasons articulated above, in any case in which we have found probable cause, we direct our counsel (in recommending what, if any, penalty is warranted) to inquire as to the respondent contractor's actual knowledge of the Act's prohibition and any notice given to the contractor by the City or communication from a council member's campaign treasurer or committee. We anticipate that in the future the occurrence of this issue will be greatly reduced if not eliminated through the City Manager and Superintendent of Schools' systematic dissemination of information

to potential contractors and the requirement that the contractors sign a statement attesting to their knowledge of the Act's requirements and their compliance with its known prohibitions.

B. SPECIFIC PROBABLE CAUSE DETERMINATIONS

This section addresses each numbered allegation of Part II of Mr. Bassette's complaint.

1. Contributions by Dr. Fred Blackwell/Medical Group at City Center.

Allegation:

Dr. Fred Blackwell/Medical Group at City Center, the recipient of the medical services contract awarded per Resolution 71794 dated 4/18/95 by the City of Oakland. The RFP was distributed in 6/94, submittals were received in 9/94. Dr. Blackwell and/or his company made the following contributions:

To Mayor Elihu Harris	$250 in 4/97 $500 in 5/95 $200 in 8/94 $700/$500 in 8/94
To Council member Laurence Reid	$500 in 9/96 $100 in 10/95
To Council member Nate Miley	$500 in 12/95
To Council member Jane Brunner	$250 in 2/97 $250 in 6/96 $250 in 10/96 $250 in 1/96
To Council member Natalie Bayton	$500 in 9/95 $500 in 1/96 $250 in 7/96
To Council member Henry Chang	$500 in 9/96
To Councilman Ignacio De La Fuente	$500 in 4/95 $250 in 5/97"

Analysis:

The RFP involved in this contract for medical services was dated July 26, 1994. The City Council selected the Medical Group at City Center's ("Medical Group's") proposal at its April 18, 1995 meeting, and a written contract was finally negotiated and signed by Medical Group on August 5, 1996, and by the City on September 12, 1996. There seems to have been an unusually

long delay between the Council resolution and the execution of the contract. Alleged contributions were made to former Mayor Harris and to former Council member Jordan between the date of the RFP and the date of the Council resolution, and to Harris, Reid, Miley, Brunner, Bayton, and De La Fuente between the date of the resolution and the date Medical Group signed the written contract.[20] Other than contributions made during the time the Act was suspended in 1997, only the contributions to Reid, Brunner, and Bayton were made within two years before the date of Mr. Bassette's complaint. One of the contributions to Brunner and the contribution to Reid were made after the contract was entered into. There is probable cause to conduct a hearing on whether Dr. Blackwell and the Medical Group violated the Act by reason of a contribution to council member Brunner and a contribution to former council member Bayton during June and July of 1996.

2. <u>Contributions by Waste Management of Alameda County.</u>

Allegation:

Waste Management is the exclusive provider of garbage pickup service in the City of Oakland. In November of 1994, Waste Management entered into an agreement with the City of Oakland to sponsor Household Hazardous Waste Collection Events and a separate agreement was signed for $63,000 to provide Christmas tree recycling. In 2/95 negotiations were pending for green waste collection and recycling as well as rate restructuring. The main franchise agreement was executed in July 1995 per Resolution R-71978. An amendment to the recycling agreement was also authorized in 7/95 as Resolution 72019. A rate increase was approved in July 1996. WM made the following contributions:

To Council member Reid	$500 in 10/96
	$500 in 11/95
	$250 in 12/95
	$250 in 7/95

20. The September 1996 contribution to Chang was made (according to the pertinent campaign statement) on September 19, 1996, a week after the contract was entered into.

To Council member Miley	$401 in 7/94 $500 in 2/95 $100 in 12/95 $99 in 2/96 $50 in 5/96 $99/347 in 10/96[21] $500 in 6/96
To Council member Brunner	$500 in 10/96
To Council member Bayton	$250 in 5/96
To Council member Jordan	$200 in 5/94
To Council member Woods-Jones	$500 in 11/94
To Council member Russo	$500 in 12/93 $500 in 7/94 $200 in 2/95
To Council member Chang	$100 in 2/96 $500 in 3/96 $500 in 10/96
To Council member Spees	$500 in 4/96
To Council member De La Fuente	$500 in 2/93 $500 in 10/93 $1000 in 12/96

Analysis:

An amendment to an existing contract for residential recycling service was signed by the City on February 16, 1996, and questioned contributions before that date are beyond the jurisdiction of the Commission pursuant to the two-year limitations period. The complaint alleges that a rate increase was approved in July 1996, but it appears that the City Attorney's office advised Waste Management (through an advice letter dated January 31, 1994) that rate review hearings do not constitute "negotiations" under the Act. Although the Commission is not bound by that opinion,

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21. The campaign statements reflect that an additional $100 contribution was made by an employee named Joan Clark on October 11, 1996 which she indicated (in response to investigation by outside counsel) came from her own funds and of her own volition. The $99/347 contributions listed in the complaint as of 10/96 appear to have consisted of a $250 contribution by Claude Everhart and a $99 contribution by a Mr. McDonald, both then vice presidents of the company. No evidence was found to justify attributing either of these contributions to the company or any other individual.

the Commission believes that (even if it were to disagree with the City Attorney's view) it would not be appropriate in this instance to impose any penalty on Waste Management for relying on the City Attorney in good faith by making contributions while the rate increase was pending.

Although contractors are encouraged to seek guidance from the City Attorney in interpreting the City Council's intent in adopting ordinances, the ultimate authority under Oakland's City Charter is now the Public Ethics Commission. Since the Commission may not necessarily concur with a particular City Attorney opinion, future reliance on any such opinion will not be dispositive. If the Commission disagrees with such interpretation, the reliance will only be considered on the issue of good faith in mitigation of the violation. For definitive guidance, formal advisory opinions may be requested from the Commission itself.

On September 3, 1996, the City Council adopted a resolution approving an amendment to the recycling agreement under which Waste Management would be paid a total of about $5,500 for collecting used oil filters. The resulting contract amendment was dated October 22, 1996. Although the dollar amount of the amendment was less than the usual threshold for City Council approval, the Council adopted a resolution approving the amendment, apparently because the City's recycling contractor's franchise agreements provided for any increases in compensation to be approved by the Council.[22] However, absent express provision to the contrary, it appears appropriate to view an amendment as a separate contract for purposes of the Act's application. In analyzing the contributions made during the negotiations for the oil filter recycling amendment, we note that the Act is explicit that covered contracts are determined solely by their value, not by whether the Council nonetheless approves them. Thus, the Commission determines that contracts approved by the Council for reasons other than their value do not fall within the Act. Moreover, although contributions were made to Reid, Brunner and Chang in October 1996, all three contributions appear to have been made after the amendment was entered into.[15] There is no probable cause to conduct a hearing on the allegations concerning contributions by Waste Management of Alameda County.

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22. The funds used to pay Waste Management for the oil filter collection came from grant monies the City had received for this purpose.

The Commission notes, however, that the City Council has recently approved changes to the Act which extend its coverage to amendments of contracts that were originally subject to approval by the City Council due to their value and also extend the prohibition on contributions to six months (180 days) following a contract's formation. Under the new provisions, some of the contributions involved here would appear to be prohibited.

3. Baines/Robertson Contractors.

Allegation:

These individuals won the rights to develop a piece of property owned by the Redevelopment Agency of the City of Oakland. They ran into financial difficulties and were able to obtain loans and grants from the City on three separate occasions. Subsidies were granted 6/93. Grants were approved on 4/95 and 5/96. Baines and Robertson also received a construction contract for the City Administration Complex. In 8/95 they were also awarded a portion of the contract to monitor minority participation requirements for the Coliseum Stadium. Contributions were made as follows:

To Harris	$125 in 6/96 $150 in 2/94 $150/$150 in 2/94
To Miley	$100 in 12/95
To Reid	$250 in 8/96
To Nadel	$!00 in 11/96
To Brunner	$250 in 2/97
To Bayton	$500 in 2/96
To De La Fuente	$125 in 1/93 $125 in 7/93 $ 99 in 4/95 $250 in 3/96 $500 in 12/96 $250 in 5/97

Analysis:

The grants and subsidies referred to in the complaint are not the types of transactions which are covered by the Act, and contracts with the Redevelopment Agency are not contracts with the City. Also, according to city staff, Baines/Robertson never contracted directly with the City but

entered into a subcontract with Hensel Phelps, which apparently had a contract with the City. Because no relevant contractual relationship between Baines/Robertson and the City has been determined to exist, there is no probable cause to conduct a hearing on the allegations based upon contributions by Baines/Robertson.

5. <u>Alan Dones/Rondeau Bay Construction.</u>

Allegation:

Mr. Dones is the owner of Rondeau Bay Construction. His company was one of four companies which won the contract to monitor compliance on minority construction participation on the Oakland Coliseum renovation project. In 9/94, he also received a HUD 108 loan from the city to purchase as office building. In 8/95 Dones was awarded a part of the contract to monitor minority construction participation in the Coliseum Stadium project. In 11/95 he received a subcontract to work on the City Administration Building. In 4/96 he was involved in negotiations for monitoring minority participation in the Coliseum Arena project. In 11/96, the City foreclosed on the office building for nonpayment and subsequently leased the premises back to Rondeau Bay. In 6/97, the City recognized Rondeau Bay as a primary contractor on the City Administration Building project. In the fall of 1997, Rondeau Bay contracted with the City to clean and prepare storm drains for El Nino.

He made the following contributions:

To Harris	$250 in 5/97 $1000/$500 in 4/95 $500 in 9/94
To Miley	$250 in 2/94 $400 in 12/95 $100 in 5/96
To Reid	$500 in 11/95
To Brunner	$150 in 4/97
To Bayton	$432 in 10/94 $500 in 4/95 $500 in 8/96

Analysis:

The alleged receipt of a loan from the City, a subcontract with another party who had contracted with the City, and a lease from the City are not transactions covered by the Act. Contributions made during any negotiations for contracts entered into more than two years before the presentation of the complaint (before June 2, 1996) are not within the Commission's jurisdiction, and the Act was suspended during 1997. That leaves the alleged April 1996 contract negotiations for monitoring minority participation in the Coliseum Arena project as the only set of negotiations which the Commission has jurisdiction to address. The only contribution which potentially might constitute a violation during these negotiations was $500 given to council member Bayton on August 9, 1996. However, it also appears from information received by independent counsel that any contract would have been either with the Oakland-Alameda County Coliseum Authority or its contractor, neither of which is a covered entity under the Act. There is no probable cause to conduct a hearing on the allegations based upon contributions made by Alan Dones/Rondeau Bay Construction.

6. Davillier/Sloan.

Allegation:

In 8/95, Jake Sloan was also involved in the monitoring of minority construction participation at the Coliseum Stadium. In the first half of 1996, he was involved in the Coliseum Arena project. He and his wife donated the following:[23]

To Harris	$1000/$500 in 5/96 $500 in 8/94 $1000 in 8/94 $350 in 1/94 $150 in 3/94 $500 in 3/94
To Reid	$500 in 10/95 $500 in 10/96
To Miley	$200 in 2/96
To Bayton	$500 in 3/96 $500 in 11/96
To Nadel	$100 in 11/96
To Russo	$250 in 6/96
To Woods Jones	$250 in 11/94

To De La Fuente	$500 in 9/95 $401 in 12/96 $250 in 5/97

Analysis:

The complaint alludes only to contracts concluded before the beginning of the two-year limitations period, so any contributions made during negotiations for those contracts are not within the Commission's jurisdiction. Davillier/Sloan also entered into an October 1, 1996 contract for *the City* to provide payroll and minority participation services to Davillier/Sloan in consideration of the payment of up to $124,350. Although the City Council did adopt a resolution (dated October 15, 1996) authorizing the City Manager to enter into the agreement, it does not appear that this is a type of contract for the rendition of personal services covered by the Act, that is, that the Act is intended to cover situations where the City is contracting for the other party to provide services, not the reverse.

A $500 contribution was made to Harris in on May 3, 1996, a $250 contribution was made to Russo in June of 1996 and a $500 contribution was made to Reid on October 17, 1996. The contribution to Reid was made after the contract was approved, and we have no information indicating that negotiations for this contract were pending by June 1996. Given these facts and our doubt as to whether the Act was intended to apply to this type of contract, the Commission has determined that there is no probable cause to conduct a hearing on the allegations based upon contributions made by Davillier/Sloan.

7. <u>Pilam Lee/Montclair Golf Enterprises.</u>

Allegation:

Pilam Lee, operator of the Montclair Gold Course. Mr. Lee had been operating this City facility for many years but had to compete with other proposals to continue the management. The Request for Proposals was authorized in 2/96. His proposal was ultimately chosen.

To Harris	$350 in 8/94

To Reid	\$500 in 1/96 \$300 in 3/96 **\$150 in 10/96**
To Brunner	\$500 in 1/96 **\$500 in 9/96**
To De La Fuente	\$500 in 5/95 **\$500 in 12/96**
To Miley	\$198 in 5/96
To Russo	**\$500 in 7/96**
To Chang	\$100 in 6/95 \$500 in 1/97

Analysis:

In October 1994, Montclair Golf Enterprises, Inc. ("MGE"), the operator of the City's golf concession at the Montclair Golf Club[23] requested a new 20-year concession agreement. MGE submitted a revised proposal in early January 1996. Also in January 1996, the City chose not to agree to a long-term extension of the existing contract but instead offered a month to month extension after 3/31/96 with a new RFP process to begin. An April 22, 1996 notice set June 28, 1996 as the deadline for submission of proposals under the RFP process, and MGE submitted a formal proposal on June 28, 1996. It appears that the City Council designated MGE as the "tentative concessionaire" in late 1996 (after November 19) or early 1997 pending the outcome of negotiations for a new concession agreement; that negotiations between MGE and City staff were held in early 1997; and that a new 20-year concession agreement between the City and MGE was entered into in June 1997. Contributions apparently were made (within two years before the filing of the complaint) to Reid, and October 1996 (\$150), to Brunner in September 1996 (\$500), to

23. A January 26, 1996, memorandum from the Office of Parks, Recreation and Cultural Affairs to Craig Koci states that Pilam Lee assumed 100 % ownership of MGE in 1991.

Russo in July of 1996 ($500) and to De La Fuente in December 1996 ($500).[24] There is probable cause to conduct a hearing on these four contributions.

8. <u>Dreyers Ice Cream/Gary Rogers.</u>

Allegation:

Dreyers needed approval for expanding their office building in the Rockridge district. The initial application for a Major Conditional Use Permit was submitted in 1/95, the public hearing on the Environmental Impact Report was in 10/95. The permit was approved by the planning commission, appealed to the City Council and ultimately confirmed in April 1996.

To Harris	$250 in 5/97 $1000 in 9/94 $500/$1000 in 9/94 $500 in 5/94 $500/$500 in 5/94
To Reid	$200 in 3/96
To Miley	$200 in 3/96
To Russo	$500 in 5/94 $250 in 5/94
To Chang	$250 in 5/95 $500 in 2/96 $250 in 10/96 $250 in 10/96
To Jordan	$250 in 4/95 $250 in 4/96 $250 in 10/96
To De La Fuente	$250 in 6/95 $250 in 10/95

Analysis:

The conditional use permit application referenced in the complaint was not a contract with the City and therefore is not a transaction covered by the Act. There is no probable cause to

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24. All of the contributions were made in the name of "Montclair Golf Club", according to the pertinent campaign statements filed with the City Clerk.

conduct a hearing on the allegations based upon contributions made by Dreyers Ice Cream/Gary Rogers.

9. Douglas Parking Co.

Allegation:

Douglas operates several City of Oakland parking facilities.

To Harris	$250 in 3/97 $100 in 10/94 $350 in 9/94
To Reid	$250 in 12/95

Analysis:

The most recent contract between Douglas Parking Co. and the City appears to be a lease entered into in 1993. Accordingly, there is no probable cause to conduct a hearing on the allegations based upon contributions made by Douglas Parking Co.

10. Walter Cohen.

Allegation:

Walter Cohen received a consulting contract from the City's Office of Economic Development in 2/95, an additional 12 months extension was approved by council in 4/96. He made these contributions:

To Harris	$240 in 11/96
To Reid	$200 in 12/96
To Brunner	$250 in 12/96
To Nadel	$150 in 11/96
To Russo	$200 in 12/96

Analysis:

The consulting contracts alleged in the complaint were all entered into more than two years before the complaint was filed and before any of the alleged contributions. Copies of the Agreement

between the City and Mr. Cohen, and its amendments, bear dates of 8/1/94, 5/25/95, 5/31/96, and 5/6/97. As the contributions were made in November and December of 1996, they do not appear to have been made at a time when contract negotiations might have been pending. The Commission has concluded that there is no probable cause to conduct a hearing on the allegations based upon contributions made by Walter Cohen.

11. Dan Finnane/Golden State Warriors.

Allegation:

Since 1989, the Golden State Warriors have had discussions with City staff regarding the construction of a new arena. They signed a Memorandum of Understanding with the City in 2/96 and the agreement was adopted in principle in 4/96. The issuance of $140 million in bonds to finance the construction was approved by Resolution R72715 in 6/96. Dan Finnane, the President of the organization contributed $625 to De La Fuente in 1993 and $200 to Spees in April 1994.

Analysis:

The bond issue was not a transaction covered by the Act, and the other contracts alleged (assuming they are within the categories described in the Act) are alleged to have been entered into more than two years before Mr. Bassette's complaint. Moreover, the alleged $625 contribution to De La Fuente in 1993 is irrelevant because the Act did not take effect until January 1, 1994. There is no probable cause to conduct a hearing on the basis of the allegations based upon contributions made by Dan Finnane.

12. Baner Financial Interests.

Allegation:

Bill Baner was one of the principals in the Ice Rink Project and the old Merritt College Project. A DDA was signed with the City for the Merritt College project on 10/5/93. A six-month extension was granted in 7/94. The sale of the ice rink property was approved by council to US Ice in 2/95. Closed session negotiations on old Merritt College continued from May through June of 1995. A loan guarantee of $200,000 to United Labor Bank was approved by Council for the benefit of Baner and the Old Merritt College project in 10/95. He contributed $150 to Mayor Harris on 2/8/94 to Mayor Harris and another $500 on 7/11/96.

Analysis:

Any violation arising out of the February 8, 1994, contribution to Mayor Harris is not subject to the Commission's jurisdiction, and the July 11, 1996, contribution came after any contracts had already been entered into. There is no probable cause to conduct a hearing on the basis of the allegations based upon contributions made by Baner Financial Interests or Bill Baner.

13. <u>James Johnson/JAE Properties.</u>

Allegation:

James Johnson/JAE properties managed the City's Alice Arts Center Hotel 7/93 to 7/97. The original contract was executed 7/93, a six-month extension was signed in 12/94 and another renewal was granted in 7/95. Mr. Johnson and his family made the following contributions:

To Harris	$200/$200 in 6/96 $500 in 5/95 $300 in 2/94 $200 in 10/94 $500 in 6/94 $150 in 6/94
To Reid	$500 in 3/96 $250 in 10/96
To Brunner	$250 in 12/96
To Bayton	$250 in 1/95 $200 in 3/95 $250 in 11/96
To Jordan	$250 in 3/95
To Woods Jones	$200 in 3/95
To De La Fuente	$125 in 1/93
To Chang	$500 in 9/96
To Spees	$100 in 5/94 $200 in 6/94

Analysis:

A July 1, 1996 amendment extended JAE Properties' contract to manage the Alice Arts Center Hotel on a month-to-month basis for a maximum of six months at a rate not to exceed $13,750 per month. The amendment was approved by a City Council resolution dated September 3, 1996. A second Council resolution, dated December 17, 1996, authorized another month-to-month extension through April 15, 1997, at the same rate. Although both amendments went before the City Council, the Commission is informed that there was no traditional "negotiating" involved; instead (according to a city employee), the City simply indicated its willingness to extend the contract on a month-to-month basis on exactly the same terms, and then did so. Contributions include $200 to Harris in June 1996,[25] $250 to Reid in October 1996, $250 to Brunner in December 1996, and $250 to Bayton in November 1996. Giving the contributor the benefit of the doubt as to the scope of the term "negotiations" in the Act when it was not defined, it is difficult to find that any "negotiations" occurred here.[26] Accordingly, the Commission declines to determine that the provisions of the Act should be applied to this transaction. Accordingly, there is no probable cause to conduct a hearing on the allegations based upon contributions made by James Johnson/JAE Properties.

15. <u>Rube and Dan's Body Shop.</u>

Allegation:

Rube and Dan's Body Shop is one of the City's towing contractors. They donated $500 to Harris on 2/26/96.

Analysis

Rube and Dan's Body Shop was a member of the Oakland Tow Car Association ("OTCA"), which apparently is a joint venture.[27] OTCA had contracted with the City in 1981.[28]
The Council authorized the Eighth Amendment to that contract in February 1995, and the Council authorized a Ninth Amendment, including a rate adjustment, by a June 11, 1996 resolution. The

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25. Although the complaint suggests that there were two $200 contributions to Mayor Harris, the relevant campaign statement shows only one $200 contribution from James Johnson to Mayor Harris during June 1996.

26. The proposal to extend a contract on the same terms or to enter into a new contract on the same terms as before appears to be well within the definition of "commencement of negotiations" set forth in the newly adopted amendments to the Act.

27. Also, see the discussion regarding A&B Auto.

only contribution alleged is $500 given to Harris on February 26, 1996. It seems unlikely (and the documents do not establish) that there were any negotiations pending with respect to the substance of the Ninth Amendment in February 1996. In any case, the alleged contribution was made more than two years before the filing of the complaint. There is no probable cause to conduct a hearing on the allegations based upon a contribution by Rube and Dans' Body Shop.

16. <u>Duong Family/California Waste Solutions.</u>

Allegation:

The Duong family owns California Waste Solutions, one of the City's three recycling contractors. Affiliated companies include Golden Eagle Trucking and DT Paper Trading. In 6/95 by Resolution 71980, [the] council authorized an amendment to the agreement with California Waste Solutions for residential recycling services.

To Harris	Victor Duong donated $300 on 1/11/96
	David Duong donated $750/$250 on 5/11/95 $250 on 5/11/95 $200 on 9/22/94
	Michael Duong donated $250 on 9/19/94
	Golden Eagle donated $250 in 11/94 and $500 in 1/96
To Reid	Kristina Duong donated $500 on 2/22/95
	Golden Eagle Trucking donated $500 on 9/21/95
	Dennis Duong donated $500 on 1/20/96
	Kristina Duong and Calif Waste Solutions each donated $500 on 8/14/96
	Dennis Duong donated $500 and Golden Eagle Trucking donated $200 on 9/19/96
	D/T Paper Trading donated $500 on 9/25/96
	David Duong Donated $500 on 10/24/96 and another $500 on 11/22/95
To Brunner	Calif Waste Solutions donated $500 in 12/96 $200 in 2/97
	David Duong donated $200 in 2/96 and $500 in 9/96

	Victor Duong donated $250 in 1/96
To Bayton	Calif Waste Solutions donated $500 on 10/6/94 $500 on 9/29/95 on 10/21/96 Calif Waste Solutions, Warren Le, a CWS employee, David Duong, and Golden Eagle Trucking each wrote a check for $250
To Miley	CWS donated $100 on 12/15/94 Golden Eagle donated $750 in 1/97
To Nadel	David Duong donated $250 on 11/25/96
To Russo	David Duong donated $250 on 6/20/96 CWS donated $200 on 2/14/97
To Chang	David Duong donated $375 on 5/4/95 CWS and DD each donated $200 on 12/21/95 Victor Duong donated $100 on 1/10/96 Kristina Duong donated $100 on 2/21/96 DD donated another $250 on 12/3/96
To Jordan	Calif Waste Solutions donated $500 on 3/30/95
To Woods Jones	CWS donated $212 on 11/24/94
To De La Fuente	DD contributed $250 on 1/28/93 $500 on 9/30/95 $500 on 12/26/96

Analysis:

The contract amendment referenced in the complaint was entered into in August 1995, so any violations based upon contributions made during negotiations for that amendment are not subject to the Commission's jurisdiction. Apparently, the City was also discussing contract modifications with California Waste Solutions ("CWS") between September 1995 and February 1996, but those negotiations ended more than two years before Mr. Bassette's complaint, so any related violations are also barred by limitations. On October 22, 1996, the City and CWS entered into a fourth amendment to the contract (for used oil filter collection). The dollar amount of the amendment was not such as to require City Council approval, but we have been advised that the City's recycling contractors' franchise agreements (which we have not reviewed) included a provision requiring Council approval of any changes in compensation. An RFP for a new recycling

contract was issued on January 3, 1997. CWS submitted the only proposal and ultimately entered into a new recycling contract for services to commence on January 1, 1998.

Any violations by CWS or its related entities (other than any that occurred more than two years before the complaint was filed or while the Act was suspended) would have to be based upon contributions made in the fall of 1996, during negotiations for the fourth amendment to the contract, for oil filter collection. Contributions were made by CWS during August 1996 ($500 to Reid) and October 1996 ($250 to Bayton) and by allegedly related persons and entities during August, September and October 1996.[28] CWS' October contribution to Bayton was made the day before the date of the fourth amendment. —

Because the Act (as it then read) did not cover amendments to contracts where the dollar value of the amendment did not meet the threshold for City Council approval, the Commission does not believe the Act can be applied to the fourth amendment to the contract. Accordingly, there is no probable cause to conduct a hearing on the allegations based upon contributions by California Waste Solutions or related persons or entities. The Commission notes that the Act has now been amended specifically to include amendments to contracts when the original contract required City Council approval due to its value.

17. A&B Auto/Bill Taylor.

Allegation:

A & B Auto/Bill Taylor is the City's largest towing contractor for many years. A contract amendment with the Tow Car Association of which A & B is a partner was approved by council in 2/95.

To Harris	$750/$250 in 2/95 $350 in 8/94
To Reid	$500 in 6/95 $500 in 5/96

28. These contributions include (1) $500 from Kristina Duong to Reid in August 1996, (2) $500 from Dennis Duong, $500 from D/T Paper Trading and $200 from Golden Eagle Trucking to Reid and $500 from David Duong (CWS' president) to Brunner, all in September 1996, and (3) $500 from David Duong to Reid and $250 each from Warren Le, David Duong, and Golden Eagle Trucking to Bayton, all in October 1996.

To Brunner	$300 in 2/96 $200 in 9/96 $500 in 8/96 $250 in 1/97
To Miley	$600 in 3/94 $100 in 12/94 $144 in 3/94
To Russo	$99 in 2/95 $500 in 6/96$250 in 3/97
To Chang	$250 /198 in 5/95 $50 in 9/95 $500 in 7/96 $250 in 10/96 $500 in 1/97
To Spees	$200 in 4/94
To Bayton	$100 in 9/94 $500 in 9/95 $500 in 2/96 $ 75 in 10/96
To Jordan	$100 in 4/94 $250 in 3/95
To Woods Jones	$250 in 6/94 $200 in 11/94
To De La Fuente	$625 in 1-6/93 $500 in 5/95 $500 in 10/95 $500 in 12/96

Analysis:

Like Rube and Dan's Body Shop, A&B Auto was a member of the Oakland Tow Car Association. As noted above, the Council authorized amendments to the 1981 contract with the OTCA in February 1995 and on June 11, 1996. The June 1996 resolution included authorization for a rate adjustment which appears to have involved a dollar amount easily in excess of the threshold requiring Council approval. The only pertinent contribution made within ninety days before the

resolution was $500 given to Reid by Jerry Taylor, a truck driver at A&B Auto, on May 6, 1996.[29] The owner of A&B is Bill Taylor, and the contribution from Jerry Taylor could be considered as a contribution from A&B if Jerry was Bill's minor child at the time or if Bill or A&B financed or controlled Jerry's contribution. However, the contribution by Jerry Taylor to Reid is outside the two-year statute of limitations applicable to the Commission.

There is no probable cause to conduct a hearing on the allegation based upon contributions made by Bill Taylor/A&B Auto.

19. Alex Hahn/Acorn Shopping Center.

Allegation:

Mr. Hahn purchased the Acorn Shopping Center for less than $2 million, then resold it to the City for close to $3 million. Mr. Hahn was appointed to the International Trade Commission in 1/95. In 7/95, Mr. Hahn received the City Council's reversal of a planning commission decision to disallow a major variance to establish a fast food restaurant at 4256 East 14th Street. In 2/96 Mr. Hahn was in negotiations with the City concerning the sale of the Acorn Shopping Center.

To Harris	$500 on 5/1/95 $500 on 10/10/94 $500 on 10/20/94 $350 on 8/25/94 $1000 on 2/17/94
To Russo	$250 in 7/96
To Chang	$100 in 2/96 $500 in 1/97
To Bayton	$150 in 10/96
To De La Fuente	$500 in 8/95

Analysis:

Mr. Hahn sold the Acorn Shopping Center to the Redevelopment Agency, not the City, so the Act does not apply to the transaction. The 1995 proceedings concerning a zoning variance for a

29. The June 1996 contribution to council member Russo was made on 6/13/96, two days *after* the City Council's action.

fast food restaurant are not contract negotiations covered by the Act. There is no probable cause to conduct a hearing on the allegations based upon contributions by Alex Hahn/Acorn Shopping Center.

20. Cable Oakland/TCI[30]

Allegation:

Cable Oakland was the City's former cable TV supplier and was ultimately acquired by TCI Cable with Council approval in 12/94. A resolution to approve new rates for TCI was approved by council in 6/96. Negotiations to renew the franchise agreement were scheduled in 5/97.

To Harris	$500 on 5/16/95 $500 on 10/25/94 $250 on 10/1/94 $600 on 2/1/94
To Reid	$300 in 10/95 $198 in 9/96 $396 in 10/96
To Brunner	$198 in 1/96
To Jordan	$100 in 5/94 $198 in 3/95
To Woods Jones	$106 in 11/94
To De La Fuente	$125 in 6/93 $198 in 12/93 $396 in 4/95 $400 in 9/95
To Miley	$200 in 3/94 $100 in 5/95
To Russo	$198 in 4/94
To Spees	$200 in 1/94 $200 in 5/94

30. Commissioner James Wheaton recused himself from participating in the decision on this allegation.

Analysis:

It appears that the City Council was considering approval of an increase in TCI's basic service rates between April 9, 1996, and July 23, 1996, and possibly even after that date. The Council's involvement in this issue, however, seems difficult to characterize as contract negotiations because the Council's authority to review cable television rates was derived from federal legislation rather than from the franchise agreement between TCI (or its predecessor Cable Oakland) and the City. Also beginning in April 1996, the Council was considering whether to authorize the use of an informal procedure for the renewal of TCI's franchise, which was to expire in December 1998, and Mr. Bassette's complaint alleges that negotiations to renew TCI's franchise agreement were scheduled for May 1997 (by which time the Act was suspended). TCI contributed $198 to Reid in September 1996 and $396 to Reid in October 1996.[31]

According to city staff nothing concerning the renewal of TCI's franchise was before the Council in September or October 1996, the months during which relevant contributions were made. There is therefore no probable cause to conduct a hearing on the allegations based upon contributions made by Cable Oakland/TCI.

21. <u>Cochran & Celli/Steve Simi.</u>

Allegation:

Mr. Simi owns several of the auto dealerships in this area. The City ultimately designated upper Broadway as Oakland's Auto Row and allocated close to 2 million dollars for improvements of the infrastructure. In 6/96 council awarded a contract to Cochran and Celli for the purchase of subcompact vehicles for $213,818.

To Harris	$500 on 5/8/95 $500 on 10/14/94

31. Reid's treasurer tried to return $94 to TCI, but Reid's campaign committee's check was never cashed.

To Miley	$250 in 12/94 $100 in 3/95 $199 in 12/95
To Nadel	$199 in 3/96
To Russo	$250 in 2/95 $250 in 2/97
To Reid	$500 in 8/96 $100 in 11/96
To Brunner	$100 in 2/97
To De La Fuente	$250 in 4/95 $500 in 12/96

Analysis:

On April 16, 1996, specifications for bids to sell a number of automobiles to the City were sent out. Cochran & Celli's (C&C's) bid was opened on May 6, 1996, and accepted by a City Council resolution dated July 23, 1996. Later, on December 10, 1996, the Council passed a resolution authorizing the purchase of additional automobiles from C&C on the same terms. C&C had previously advised that it would sell the additional vehicles at the same price. Both resolutions involved more than $50,000. (The City also issued a purchase order for automobile service and maintenance to C&C on October 17, 1996, but it was for less than $15,000.) The only pertinent contribution made during the relevant time period was $500 contributed to Reid on August 14, 1996.[32] There is no evidence that contract negotiations were actually pending in August, when the contribution was made to Mr. Reid. Thus, there is no probable cause to conduct a hearing on the allegations based upon contributions made by Cochran & Celli.

23. <u>Alexander Haagen.</u>

Allegation:

Alexander Haagen owns the former Sears Building on Telegraph Avenue and was rumored to be looking for City assistance in its redevelopment.

To Harris	$1000 on 10/8/94 $1000 on 11/1/94 by Seymour Kreshek $1000 on 10/27/94 by Charlotte Haagen

Analysis:

The complaint alleges only that Mr. Haagen sought City assistance in developing his property. If the City had provided assistance, such would not be within the category of contracts covered by the Act. In any event, there is no allegation that Mr. Haagen ever entered into a contract, so he is not a person who contracts within the meaning of the Act, and the alleged contributions were all made more than two years before the filing of the complaint. There is no probable cause to conduct a hearing on the allegations based upon contributions made by Alexander Haagen and related persons.

24. Edward Blakely.

Allegation:

Edward Blakely was consultant at the Mayor's office. He contributed $1000 to Harris' campaign and $500 to Harris' officeholders account on 10/26/94.

Analysis:

According to City payroll records, Mr. Blakely was employed by the City from about February 1992 through August 1995, and there are contracts showing that Mr. Blakely was retained between July 1992 and June 1993. Therefore, any contributions he made while negotiating the terms of his retention (even if it continued through August 1995) are outside the two-year limitations period. There is no probable cause to conduct a hearing on the allegations based upon alleged contributions made by Mr. Blakely.

25. Y. H. Lee.

Allegation:

Y.H. Lee, architect and former planning commissioner, was selected as the architect for the City Hall Plaza Project in 11/94. An agreement for design services on the Frank Ogawa Plaza was approved in 7/94. An amended agreement was signed in 12/95.

To Harris	$100 on 10/23/94

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32. The complaint alleges that an additional $100 was contributed to Reid in November 1996, but independent counsel for the Commission reported that he found no evidence of such contribution. The $250 December 1996 contribution to De La Fuente was made on December 26, 1996, after the Council had adopted the second of the two resolutions.

	$300 on 9/22/94 $150 on 2/17/94
To Reid	$200 in 11/95 $250 in 3/96 $100 in 3/94
To Brunner	$100 in 12/96
To De La Fuente	$125 in 6/93 $100 in 5/95 $500 in 12/96 $250 in 5/97
To Miley	$100 in 3/94
To Nadel	$135 in 7/95 $99 in 6/96 $200 in 2/97
To Chang	$180 in 3/95 $250 in 5/95 $99 in 6/95 $100 in 2/96 $300 in 9/96 $200 in 10/96
To Spees	$100 in 4/94

Analysis:

The contract for the design of Frank Ogawa Plaza was finalized more than two years before the complaint was filed, so any violations based upon contributions during negotiations for that contract are barred by the two-year limitations period. Subsequent negotiations for a contract for the design of the BART entry at City Center did not begin until March 25, 1997, by which time the Act was suspended. Accordingly, there is no probable cause to conduct a hearing on the allegations based upon contributions by Y.H. Lee.

26. Sares Regis Group.

Allegation:

Sares Regis Group was selected as co developer for the Swans Market Project. Negotiations on this project occurred in 5/95. They donated $500 on 1/29/94 and $1000 on 1/29/94 to Harris.

Analysis:

The Redevelopment Agency, not the City, entered into the Exclusive Negotiating Agreement for the development of the Swan's Market site. There is no probable cause to conduct a hearing on the allegations based upon contributions by Saris Regis Group.

27. Housewives Market Merchants Association.

Allegation:

Housewives Market Merchants Association donated $500 to Harris on 10/20/94 and $500 to Brunner in 11/95. This is the tenant association for the market which receives a significant subsidy from the City. A management contract was signed by the association with the City in 7/95.

Analysis:

The management contract was with the Redevelopment Agency, not the City, and the alleged subsidy from the City does not appear to be a transaction covered by the Act. There is no probable cause to conduct a hearing on the allegations based upon contributions by Housewives Market Merchants Association.

29. Keith Kim/Granny Goose/Merritt Bakery.

Allegation:

The City assisted Kim with financing to purchase the Merritt Bakery restaurant and Granny Goose Co. He was appointed to the International Trade Commission in 1/95. In 7/95, Granny Goose received approval for city financing.

To Harris	$500 on 10/20/94
To Reid	$500 in 1/96 $500 in 9/96
To Brunner	$500 in 3/96 $500 in 9/96
To De La Fuente	$500 in 8/95 $500 in 8/95 from Lisa Lindsey Kim $1000 in 9/96 from Granny Goose $500 in 12/96 from Granny Goose $500 in 12/96 $250 in 5/97≅

Analysis:

The transaction alleged is the City's provision of financing, which is not a transaction covered by the Act. There is no probable cause to conduct a hearing on the allegations based upon contributions by Keith Kim, Granny Goose Foods, Inc., or Merritt Bakery.

30. Uribe and Associates.

Allegation:

Peter Uribe heads this company which provides geotechnical services to a number of City projects. A contract for consulting services was approved in 8/95.

To Harris	$50 in 6/94 $500 in 8/94 $500 in 9/94 $700 in 6/96 $500 in 3/97
To Woods Jones	$300 in 11/94
To Chang	$250 in 12/95 $200 in 8/96 $750 in 1/97
To De La Fuente	$375 in 1/93 $200 in 12/93 $250 in 5/95 $375 in 2/96 $500 in 12/96 $250 in 5/97

Analysis:

On July 1, 1996, a contract between Uribe and Associates (Uribe), the Redevelopment Agency, and the City for professional geotechnical services was extended for an additional year, through June 30, 1997. The City Council resolution (dated August 1, 1995) authorizing the original contract had given the City Manager authority to extend the contract, so the one year extension in 1996 did not go before the Council. Also, on December 20, 1996, Uribe provided the City with a proposal to complete certain work on a time and materials basis, not to exceed $40,000, and a Consultant Assignment for the work was signed by March 4, 1997. A $500 contribution was made to Mayor Harris on June 20, 1996; $200 was contributed to Mayor Harris on June 27, 1996; $200 was contributed to Chang in August 1996, and $500 was contributed to De La Fuente on December 31, 1996

The question here is whether the one-year extension and the December 20, 1996 proposal were covered by the Act, which applies to contracts to render services when the "value" of the transaction would require the City Council's approval. Both the contract extension and the work documented in the Consultant Assignment involved more than the $15,000 maximum which could be contracted for without Council approval. However, the one-year extension did not go before the Council because it had previously authorized the City Manager to extend the agreement, and it appears that the 1996 proposal did not go before the council but was merely intended to document a particular assignment to be completed by Uribe under the 1995 contract, which was intended to cover work to be performed on an "as needed" basis. Although the language of the Act is somewhat ambiguous on this issue, as a matter of policy it makes little sense for the prohibition on contributions during negotiations to be applied here where the transactions in question did not involve any City Council action. There is no probable cause to conduct a hearing on the allegations based upon contributions by Uribe and Associates.

31. Gallagher and Burke.

Allegation:

Gallagher and Burke, a large general and paving contractor has contracted for a number of City jobs and will also be negotiating with the City to rezone their quarry site off Highway 580 and Edwards Avenue. In 9/94, they received a $3.9 million contract to resurface city streets. In 1/95, they received a contract for furnishing rock material for no more than $53,434. In 4/95, they were awarded the Broadway Rehabilitation Resurfacing Contract for $1,518,700. In 6/95 they received a contract for 98th Avenue improvements for $3.4 million. In 10/95 they received a contract for resurfacing streets in the Oakland Hills fire for $1,023,000. From 4/97 to 6/97 negotiations were pending for addition street resurfacing.

To Harris	$750 in 2/94 $350 in 8/94 $250 in 11/94 $500 in 5/95 $250/250 in 8/96
To Brunner	$250 in 10/96 $250 in 12/96 $250 in 3/97

To Bayton	$500 in 9/94 $500 in 1/96 $500 in 10/96
To Nadel	$250 in 12/96
To Russo	$500 in 1/94 $500 in 1/95 $250 in 3/97
To Chang	$250 in 1/96
To Spees	$100 in 4/94 $100 in 5/94
To De La Fuente	$500 in 12/93 $625 in 1-6/93 $500 in 5/95
To Jordan	$250 in 4/94
To Woods Jones	$200 in 11/94
To De La Fuente	$500 in 12/93 $625 in 1-6/93 $500 in 5/95

Analysis:

Contributions made during negotiations for the contracts referred to in the complaint are either outside the two-year limitations period or were made while the Act was suspended. Apparently however, Gallagher & Burke ("G&B") was awarded a $2 million contract to resurface streets in the hill area by a Council resolution dated July 9, 1996, after an advertisement for bids published on May 19, 1996, received a $371,000 contract to resurface a parking lot through a resolution dated August 13, 1996, and was awarded a $1,178,000 contract for street rehabilitation through a resolution dated October 29, 1996, after an advertisement for bids published on August 31 and September 10, 1996. (There is also a fall 1996 letter extending a July 18, 1994 contract to furnish paving material for an additional year, but there is no evidence the extension went before the City Council at that time.) Pertinent contributions include $250 to Harris on August 1, 1996, $250 to Brunner on October 23, 1996, and $500 to Bayton on October 4, 1996.

The question here is whether negotiations include the bidding process used for construction contracts. As discussed above, in the case of construction contracts, specifications are published,

bids are submitted, and the Council then passes a resolution accepting the lowest qualifying bid. No written contract is negotiated after the Council passes a resolution. While it is arguable that no negotiations occur in this context, the critical decision as to which of the bids is the "lowest qualifying" is committed to the Council and is also arguably the subject of "negotiations" as bidders may seek to influence determinations as to whether bids are "qualifying" and which bid is in fact the lowest. After those determinations, the key decision has been made. We consider the definition of negotiations in the newly amended Act to include published bids, and we note that the City Manager and the Superintendent of Schools will be requiring such contractors to comply with the Act. Although it may also have been the intent of the City Council to include such bids under the 1994 and 1998 versions of the Act, we are exercising our discretion not to issue probable cause due to the potential ambiguity of the Act at the time. For this reason, we conclude that there is no probable cause to conduct a hearing on the allegations based upon G&B's contributions to the campaigns of Mayor Harris in August of 1996, council member Brunner in October 1996, and council member Bayton in October of 1996.

32. ABC Security Service.

Allegation:

ABC Security Service is owned by Ana Chretien and contracts with the City of Oakland to provide security guards.

To Harris	$250 in 3/94 $300 in 2/94
To De La Fuente	$250 in 6/93 $100 in 12/93 $250 in 4/95 $250 in 9/95 $500 in 12/96

Analysis:

ABC Security Service ("ABC") began providing security at City facilities in 1991. These services were provided under a Council resolution dated March 14, 1989. (ABC was not the low bidder in 1989, but the 1989 resolution authorized the City Manager to enter into subsequent contracts with others who filed bids, and ABC was retained after the low bidder failed to perform.) There were also a number of "change orders" over the years, but (except during 1997, while the Act was suspended), the only change order within two years prior to the complaint was dated December

17, 1996. That change order extended ABC's retention from October 30, 1996, through June 30, 1997, and involved an expenditure of over $700,000. However, it appears that there was no Council involvement at this stage because city employees concluded that council authorization was not required. There was a $500 contribution to De La Fuente on December 26, 1996.

There was no City Council involvement in the contract extension and the contribution was made *after* the issuance of the change order. There is no probable cause to conduct a hearing on the allegations based upon contributions made by ABC Security Service.

33. Eastmont Mall/Jack Sumski.

Allegation:

Eastmont Mall/Jack Sumski received $2 million in redevelopment funds for the mall. A lease for a branch library was signed for the Eastmont Mall in 7/95.

To Reid	$500 in 1/96 $500 in 9/96
To Brunner	$250 in 10/96
To Bayton	$250 in 10/96≅ $344 in 4/95
To Miley	$297 in 5/96
To Nadel	$200 in 2/96
To Chang	$250 in 10/96

Analysis:

The lease between Eastmont Mall (as lessor) and the City is not within the category of contracts covered by the Act. Similarly, the loan from the City to Eastmont Town Center (from HUD Section 108 and Economic Development Initiative funds) is not a transaction covered by the Act. There is no probable cause to conduct a hearing on the allegations based upon contributions made by Eastmont Mall or Jack Sumski.

34. The Martin Group/David Martin.

Allegation:

The Martin Group/David Martin received the exclusive contract to negotiate for the downtown Entertainment district in 8/95. Further negotiations with the City occurred in 4/96.

To Harris	$500 in 11/94
To Reid	$250 in 11/95
To Brunner	$250 in 4/96
To De La Fuente	$125 in 6/93
To Russo	$250 in 1/94
To Chang	$250 in 1/96

Analysis:

The contract referenced in the complaint (an exclusive contract to negotiate for a disposition and development agreement) was with the Redevelopment Agency, not the City. There is no probable cause to conduct a hearing on the allegations based upon contributions made by the Martin Group or David Martin because contracts with the Redevelopment Agency were not covered by the Act when the contributions were made.

35. California Commercial Investments/Phil Tagami.

Allegation:

Former planning commissioner Phil Tagami is a partner with CCI and is currently involved in developing the Rotunda building with city subsidies

To Harris	$100 in 10/95 $100 in 3/96 $199 in 10/96 $400 in 11/96
To De La Fuente	$125 in 6/93 $250 in 5/95 $250 in 10/95 $250 in 6/97

Analysis:

The receipt of City subsidies for development of the Rotunda building, which is alleged in the complaint, is not a transaction covered by the Act. There is no probable cause to conduct a hearing on the allegations based upon contributions made by Phil Tagami or California Commercial Investments.

IV. CONCLUSIONS

For the reasons discussed above, the Commission concludes that there is probable cause to conduct hearings on whether the following contributions were violative of the Act's limitations on the amounts of campaign contributions:

1. The September 1996, $1,000 contribution made by Granny Goose Foods, Inc., to De La Fuente For City Council which is addressed in section IIB1a, entitled "Contribution on its face in excess of the Act's limitations," of this report;

2. The contributions shown on the table included in section IIB1b, entitled "Other contributions 'earmarked' for officeholder fund," of this report;

3. The contributions shown in bold type in the table included in section IIB1c, entitled "Contributions raising aggregation issues," of this report;

4. The contribution addressed in section IIB1d, entitled "Contribution allocated between primary and general elections," of this report; and

5. The contribution addressed in section IIB(.1), entitled "Attempted return of excess contribution to the donor," of this report.

As discussed above, we also conclude that there is probable cause to conduct hearings on the allegations of paragraphs 1and 7 of Part II of the complaint. We propose to dismiss all of the remaining allegations of the complaint. Under the Enforcement provisions of the Act, the Commission is providing a separate notice to Mr. Bassette and to each respondent party (together with a copy of this report) stating the Commission's determination as to whether there is probable cause to conduct a hearing on any allegations against the respondent, and the intention of the Commission to conduct any such hearing under the Commission's General Complaint Procedures approved by the City Council on July 20, 1999.

Under section 3.12.290 of the Campaign Finance Reform Act, the Commission has full authority to either proceed to hearing or to settle any matter and may impose appropriate penalties and fines not to exceed three times the amount of the unlawful contribution. The Commission considers complaints under the Campaign Finance Reform Act to raise important issues and to require, in furtherance of the public interest, that any dismissal or compromise be approved by majority vote of a quorum of the full Commission. The Commission notes that the Act also requires the Commission to indicate whether mediation will be undertaken pursuant to its general rules of procedure contained in the recently adopted General Complaint Procedures.

The Commission deems the use of mediation to be in the public interest in order to attempt to reduce the costs of enforcement and reach a fair resolution of the charges. Counsel for the Commission is therefore directed to contact all respondents to attempt to settle or mediate the charges subject to the Commission's ultimate approval. In the event mediation is unsuccessful as to one or more charges, the question remains as to whether outside counsel or the City Attorney's office will conduct particular prosecutions. We observe that the original basis for the City Attorney's recusal may not apply to the prosecution of individual respondents, such as those involved in Part II of the Complaint for which no City Council liability exists under the Act. Since time is of the essence under the express provisions of the Act, and settlement may be achievable, all matters are herewith being referred to outside counsel pending determination by the City Attorney's office on whether it considers itself available to prosecute any of the matters for which the Commission has determined probable cause exists for a hearing unless additional time is requested from the Chair. The City Attorney shall have until September 30, 1999, to notify the Commission of its continued recusal or availability to prosecute particular charges. The Commission's proposed dismissal of the allegations against those respondents as to whom there is no determination of probable cause shall be placed on the agenda for the next regular meeting of the Commission on September 13, 1999. For those respondents as to whom the Commission has made one or more determinations of probable cause, the proposed dismissal of other charges will be placed on the agenda for a future meeting of the Commission, to be held on a date to be determined.

Any proposed settlement of the allegations against any party shall be presented for the approval of the Commission at the soonest opportunity permitted by the Commission's regular schedule following the proposed settlement, unless approved by the Chair for consideration on a different date. Independent counsel is directed to provide a status report to the Commission on each of the pending matters as soon as practicable. In the event mediation is unsuccessful in resolving the issues, and the parties otherwise have not reached a proposed settlement, the Commission intends to convene a hearing on each contested matter within ninety days following notification of unsuccessful attempts at mediation. The Commission's staff is hereby directed to hand deliver a copy of this report and the accompanying notices to the office of the City Attorney and to send a complete copy by first class mail to complainant Bassette and to Mr. Schuricht. All named respondents shall be provided with a copy of this report and of the relevant notice by first class mail. Campaign treasurers of named committees shall also receive a copy of this report and other relevant notices by first class mail. This report was adopted by vote of the Commission at a closed

session on August 30, 1999 and directed to be finalized by staff for distribution as soon as feasible thereafter.

Except as specified below this report and the related probable cause and dismissal notices were adopted by unanimous vote of all four Commissioners present at a closed session on August 30, 1999 and directed to be finalized by staff for distribution as soon as feasible thereafter, and no later than Wednesday, September 1, 1999. Commissioner Garrison abstained from voting on item 1.a in Part I, Section B. of the report (contribution made by Granny Goose Foods, Inc. to De La Fuente for City Council). Commissioner Pearlman abstained from voting on item 1.b. in Part I, Section B. of the report (contributions by Uribe & Associates, Gallagher & Burke and James Johnson to former Mayor Elihu Harris, and a contribution by A & B Auto to Council member Henry Chang, Jr.). Commissioner Pearlman also abstained from voting on item 2. in Part I, Section B. of the report (Other Alleged Excessive Contributions).

9/1/99 — Dated

Lise A. Pearlman — Lise A. Pearlman, Chair

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